HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.2395 of 2005 (O&M)

Date of decision : 27.11.2006

M/s Sant Finance and Invest Co. and another .....Petitioners

versus

Hardeep Kaur and another .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Ashwani Talwar, Advocate for the petitioners.
Mr.Kanwaljit Singh, Advocate for the respondents.

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ORDER

HEMANT GUPTA, J. (Oral)

The challenge in the present revision petition is to the order dated 24.4.2006, passed by the learned trial Court, whereby an application filed by the defendant-petitioners for stay of proceedings in view of the agreement containing arbitration clause between the parties, was declined and the defendant-petitioners were directed to file written statement. However, it was ordered that ground taken in the application will be taken carefully at the time of framing of issues.

Learned counsel for the petitioners has referred to para No1 of the plaint wherein the plaintiff has admitted the execution of the hire purchase agreement. In the application for stay of proceedings, filed under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), the copy of the hire purchase agreement was attached. Therefore, under the provisions of Section 8 of the Act, the judicial authority before whom the suit for declaration was filed, could not proceed with the suit in view of the bar created therein.

Learned counsel for the respondents has argued that factum of execution of the agreement is disputed question of fact and, therefore, the application under Section 8 of the Act was not maintainable.

However, after hearing learned counsel for the parties, I am of the opinion that the stand of the respondents that execution of the agreement is in dispute is not sustainable in law. It is categorical case of the plaintiff in the plaint itself that hire purchase agreement was executed. Learned counsel for the respondent-plaintiff could not produce the said hire purchase agreement, referred to by the plaintiff in the plaint and, therefore, I find no reason to doubt the averments made by the defendant in the application that the said agreement contains an arbitration clause which has been reproduced in the revision petition as well. Therefore, in terms of Section 8 of the Act, the proceedings before the Civil Court cannot continue as the parties have decided to resolve the dispute by arbitration proceedings.

Consequently, the order passed by the learned trial Court dated 24.4.2006 is set aside. The proceedings before the Civil Court shall stand terminated. The parties shall take recourse of the arbitration proceedings within one month from today.

The revision petition stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

November 27, 2006
**mohinder*